IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.10.2007

CORAM:

THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN
and
THE HONOURABLE MRS.JUSTICE CHITRA VENKATARAMAN

T.C. (Appeal) No.1372 of 2007

M/s.Matheson Bosanquet Enterprises Ltd.
(formerly M/s.Burnside Investments & Holdings Ltd.)
No.26/1, Sua House
Kasturba Cross Road
Bangalore-560 002. .. Appellant

versus

The Deputy Commissioner of Income Tax
Special Range-II
Coimbatore. .. Respondent

PRAYER: Tax Case Appeal filed under Section 260-A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, "A" Bench, Chennai, dated 23.3.2007 in ITA No.2191/Mds/2005 and against the order of Commissioner of Income Tax (Appeals)-I, Coimbatore dated 12.7.2005 in Appeal No.213/96-97 and against the Assessment order dated 25.3.1996 in GIR/PAN No.B-16 of the Dy Commissioner of Income Tax Spl. Range II, Coimbatore.

For appellant : Mr.C.V.Rajan
for M/s.Subbaraya Iyer Padmanabhan

For respondent : Mr.J.Narayanasamy
Standing Counsel for Income Tax

JUDGMENT

(Judgment of the Court was delivered by K.RAVIRAJA PANDIAN,J.)

The assessee company has preferred this appeal formulating the following substantial questions of law:

(i) Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that profit from sale of investment should be assessed as Business income as against capital gains?

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(ii) Whether the Tribunal was justified in not appreciating that the shares were held by the appellant as investment and hence the profit on sale should be assessed as capital gains?
(iii) Whether on the facts and in the circumstances of the case the Tribunal was right in law in holding that premium for renouncing the rights share should be assessed as business income?
(iv) Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that depreciation in value of the original shares on account of issue of rights shares should not be reduced from sale proceeds of the rights entitlement?

The relevant assessment year is 1993-94.

2. The facts in this case are as follows:

The appellant company is engaged in the business of dealing in shares etc. For the assessment year 1993-94, the appellant filed its return of income on 30.12.1993, admitting a total income of Rs.6,51,380/-. Scrutiny assessment under Section 143(3) was completed on 25.3.1996 determining the total income at Rs.35,32,830/-. While completing the assessment, the Assessing Officer treated the income derived from sale of shares as business income as against capital gains and disallowance of the loss on sale of right entitlement of shares amongst them.

3. The order has been carried on by way of appeal to the Commissioner of Income Tax (Appeals), who, by following the order of the Tribunal in the assessee's own case in the earlier year 1992-93 vide dated 30.12.1996, held that where the Tribunal has after taking into consideration the facts that the shares were purchased with a view to sell them at a profit and in fact those shares were sold within the same accounting year, the conduct of the assessee was not to hold them as investment and earn some interest income but to trade in shares. That was clear from the frequency and nature of transactions in shares. Merely because the assessee had shown those shares as investments in its books of accounts, it could not be said to determine that those shares were held on the investment account, whereas, in fact, the close perusal of the paper book showed who the assessee had purchased and sold shares. The Tribunal also came to the conclusion that the intention of the assessee was to make gain by dealing in them. Further, applying the principle laid down by the Supreme Court in the case of RAJA BAHADUR KAMAKHYA NARAIN SINGH Vs. CIT reported in 77 ITR 253 (SC), held that the income derived from the sale of the shares was only a business income, and on that basis, confirmed the order of assessment, which order has further been confirmed by the Tribunal on the assessee taking the matter on further appeal to the Income Tax Appellate Tribunal, on the same reasoning that has been been given by the Tribunal for the previous assessment year 1992-93. The Tribunal held that the income received on the sale of shares was only a business income. The said order is now canvassed before us by filing the present appeal.

4. Before us, it was contended that the appellant held the shares in investment, which is amply clear from the balance sheet, which is an audited one, the purchase of shares was only in the

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nature of investment by the company. It was for the appellant to decide its own business policy and act upon them. The mere fact that the company periodically perused its investment does not necessarily mean that the profit resulting from such variation would constitute trading in investment.

5. We heard the arguments of the learned counsel and perused the material available on record.

6. As stated in the summation of facts, in respect of the assessment year 1992-93, the issue has become final to the effect that the income earned by the assessee company on the sale of shares has been regarded as a business income, having regard to the shares held by the assessee and further having regard to the nature of business conducted by the assessee.

7. In the absence of any material to show that the assessee has changed his business, that they are not dealing with shares, and that the shares were kept exclusively for the investment purpose, we are not able to take a different view than the one taken by the authorities below concurrently. Hence, we do not find any substantial question of law to entertain this appeal and therefore, the appeal is dismissed. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To:

1. THE ASST. REGISTRAR,
INCOME TAX APPELLATE TRIBUNAL,
RAJAJI BHAVAN III FLOOR,
BESANT NAGAR, CHENNAI.

2. THE COMMISSIONER OF
INCOME TAX (APPEALS) I,COIMBATORE.

3. THE DEPUTY COMMISSIONER
OF INCOME TAX SPECIAL
RANGE II, COIMBATORE.

VRK (CO)
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